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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 SAM AUGELLO and ROBIN
8 AUGELLO, individually and as
9 husband and wife,

10 Plaintiffs,

11 vs.

12 BOBCAT COMPANY, a North
13 Dakota company, and JOHN DOES
14 1-10, and ROE COMPANIES, 1-10,

15 Defendants.

)
) No. CV-12-354-LRS
)

) **ORDER GRANTING**
) **MOTION FOR SUMMARY**
) **JUDGMENT**

16 **BEFORE THE COURT** is Defendant Bobcat Company's Motion For
17 Summary Judgment (ECF No. 9). This motion is heard without oral argument.

18 Defendant's motion was filed on December 26, 2012. The court
19 acknowledges that Plaintiffs' response, filed February 1, 2013 (ECF No. 15),
20 was untimely per the court's local rules, LR 7.1(c). Nonetheless, the court will
21 proceed to entertain the motion on its merits rather than granting it because of a
22 procedural deficiency.

23
24 **BACKGROUND**

25 This is a diversity action in which the Plaintiffs assert claims against
26 Defendant Clark Equipment Company d/b/a Bobcat Company (CEC) under the

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1 Washington Products Liability Act (WPLA), RCW 7.72 et seq. Plaintiffs'
2 complaint was originally filed in Spokane County Superior Court on January
3 26, 2012, and removed by CEC to this federal court on May 16, 2012. CEC
4 now moves for summary judgment contending that Idaho law applies and
5 hence, Plaintiffs' action is barred by the two year statutes of limitations in
6 Idaho which apply to: 1) an action to recover damages for personal injury,
7 including an action for breach of implied warranty, I.C. § 5-219(4); and 2) to
8 any claim brought under Idaho's Product Liability Act, I.C. § 6-1403.

9 10 **SUMMARY JUDGMENT STANDARD**

11 The purpose of summary judgment is to avoid unnecessary trials when
12 there is no dispute as to the facts before the court. *Zweig v. Hearst Corp.*, 521
13 F.2d 1129 (9th Cir.), *cert. denied*, 423 U.S. 1025, 96 S.Ct. 469 (1975). Under
14 Fed. R. Civ. P. 56, a party is entitled to summary judgment where the
15 documentary evidence produced by the parties permits only one conclusion.
16 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S.Ct. 2505 (1986);
17 *Semegen v. Weidner*, 780 F.2d 727, 732 (9th Cir. 1985). Summary judgment is
18 precluded if there exists a genuine dispute over a fact that might affect the
19 outcome of the suit under the governing law. *Anderson*, 477 U.S. at 248.

20 The moving party has the initial burden to prove that no genuine issue of
21 material fact exists. *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475
22 U.S. 574, 586, 106 S.Ct. 1348 (1986). Once the moving party has carried its
23 burden under Rule 56, "its opponent must do more than simply show that there
24 is some metaphysical doubt as to the material facts." *Id.* The party opposing
25 summary judgment must go beyond the pleadings to designate specific facts
26 establishing a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317,

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1 325, 106 S.Ct. 2548 (1986).

2 In ruling on a motion for summary judgment, all inferences drawn from
3 the underlying facts must be viewed in the light most favorable to the
4 nonmovant. *Matsushita*, 475 U.S. at 587. Nonetheless, summary judgment is
5 required against a party who fails to make a showing sufficient to establish an
6 essential element of a claim, even if there are genuine factual disputes
7 regarding other elements of the claim. *Celotex*, 477 U.S. at 322-23.

8 9 **UNDISPUTED FACTS**

10 Sam Augello, an Idaho resident, was injured on January 26, 2009, while
11 operating a Bobcat Mini Track Loader (MTL55) designed and manufactured
12 by CEC in North Dakota. CEC is incorporated in Delaware and has its
13 principal place of business in North Dakota. The accident which injured Mr.
14 Augello occurred in Idaho.

15 The Bobcat MTL55 in question was sold by CEC to Bobcat West and it
16 was delivered to retailer Bobcat West in Eugene, Oregon, on May 21, 2007.
17 On March 10, 2008, Umbrella Sprinkler Systems, through its agent, Kyle
18 Smith, purchased the MTL55 from the Bobcat West retailer in Eugene,
19 Oregon, and picked it up from that retailer's store location in Spokane,
20 Washington. Umbrella Sprinkler Systems' place of business is in Lewiston,
21 Idaho. Prior to January 26, 2009, Umbrella Sprinkler Systems and/or Kyle
22 Smith had taken the MTL55 in for service/repairs at Hahn Supply, Inc. in
23 Lewiston, Idaho. On or around January 26, 2009, Kyle Smith loaned the
24 MTL55 to Mr. Augello.

DISCUSSION

There is no dispute that there are conflicts between Washington law and Idaho law which pertain to the claims asserted by Plaintiffs. Federal courts sitting in diversity must apply the forum state's choice of law provisions in order to determine the substantive law that will control. *Brewer v. Dodson Aviation*, 447 F. Supp. 2d 1166, 1175 (W.D. Wash. 2006) (citations omitted). Washington has adopted the Restatement (Second) Conflict of Law "most significant relationship" rule for choice of law problems in tort cases. *Martin v. Goodyear Rubber & Tire Co.*, 114 Wn.App. 823, 829, 61 P.3d 1196 (2003). Under that rule, the local law of the state which, with respect to the relevant issue, has the most significant relationship to the occurrence and the parties involved, will dictate the resolution of the case. *Id.* The contacts taken into account are: (1) the place where the injury occurred; (2) the place where the conduct causing the injury occurred; (3) the domicile, residence, nationality, place of incorporation and place of business of the parties, and (4) the place where the relationship, if any, between the parties is centered. *Id.* These contacts are to be evaluated both qualitatively and quantitatively, keeping in mind the location of the most significant contacts as they relate to the issue at hand. *Id.* In personal injury cases, there is a presumption that the law of the state where the injury occurred applies, unless another state has a greater interest in determining the particular issue. *Id.*

A. The Place Where the Injury Occurred

The accident that caused the injury to Mr. Augello occurred in Idaho. Generally, in cases of personal injury, the location of the injury plays an important role in selecting the applicable law. *Restatement (Second) of*

1 *Conflict of Laws* § 145 (1971). The presumption that the law of the state where
2 the injury occurred determines the rights of the parties is generally overcome
3 only if it is shown another state has a prevailing interest in applying its law.
4 *Martin*, 114 Wn.App. at 830. This factor weighs in favor of applying Idaho
5 law.

6
7 B. The Place Where the Conduct Causing the Injury Occurred

8 In a products liability action, the place where the conduct causing the
9 injury occurred will be the location in which the defendant designed,
10 manufactured, or otherwise was involved with the product in question.
11 *Zenaida-Garcia v. Recovery Systems Technology, Inc.*, 128 Wn.App. 256, 263,
12 115 P.3d 1017 (2005). CEC designed and manufactured the MTL55 in North
13 Dakota. There is no evidence that any service/repair of the MTL55 occurred in
14 Washington. This factor is neutral and does not weigh in favor of applying
15 either Washington or Idaho law.

16
17 C. The Domicile, Residence, Nationality, Place of Incorporation And
18 Place Of Business Of The Parties

19 Plaintiffs are residents of Idaho. CEC is incorporated in Delaware and
20 has its principal place of business in North Dakota. This factor does not weigh
21 in favor of the application of any particular state's law.

22
23 D. The Place Where the Relationship Between the Parties, if any, is
24 Centered

25 When there is an existing relationship between the plaintiff and
26 defendant, and the conduct causing the injury occurred during the course of

1 that relationship, this is a contact which should be considered in determining
2 which law to apply. *Restatement (Second) of Conflict of Laws* § 145 (1971).
3 Generally, in an action for unsafe design, the place where the relationship is
4 centered is the same place as where the conduct causing the injury occurred.
5 *Zenaida-Garcia*, 128 Wn.App. at 263. When there is no direct contact between
6 plaintiff and defendant, no relationship exists for purposes of this analysis.
7 *Brewer*, 447 F.Supp.2d at 1182.

8 Here, the Plaintiffs had no direct contact with CEC. Kyle Smith, an
9 Idaho resident, picked up the MTL55 from a Bobcat West store location in
10 Spokane. Per the Declaration of Shawn Warkenthien (ECF No. 13), a Product
11 Safety Manager for CEC who attests to being familiar with CEC's corporate
12 structure, Bobcat West is "an independent construction equipment dealer."
13 Like Kyle Smith, Bobcat West is not a party to this action. Plaintiffs have not
14 presented any evidence to dispute CEC's evidence (Mr. Warkenthien's
15 declaration) that Bobcat West is "an independent construction equipment
16 dealer."

17 Because there was no direct contact between Plaintiffs and CEC, this
18 factor- place where relationship between the parties is centered- is irrelevant.
19

20 CONCLUSION

21 Relevant contacts, other than the place of injury, are lacking. In such a
22 case, the law of the place of injury prevails. *Martin*, 114 Wn.App at 830-31.
23 The place of injury is Idaho and therefore, its law prevails. Only if the relevant
24 contacts are evenly balanced will the court move on to consider the interests
25 and public policies of the concerned states. *Brewer*, 447 F.Supp.2d at 1176,
26 citing *Johnson v. Spider Staging Corp.*, 87 Wn.2d 577, 582, 555 P.2d 997

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1 (1976). Here, the contacts are not evenly balanced between Idaho and
2 Washington. Accordingly, the court need not consider the interests and public
3 policies of Idaho and Washington.

4 Idaho's applicable two year statutes of limitations bar Plaintiff's action.
5 The action was filed in Spokane County Superior Court on January 26, 2012,
6 three years after the accident which injured Mr. Augello.

7 Based on the undisputed facts, Defendant's Motion For Summary
8 Judgment (ECF No. 9) is **GRANTED**. Defendant CEC, d/b/a Bobcat
9 Company, is awarded judgment on the claims asserted against it by Plaintiffs.

10 **IT IS SO ORDERED.** The District Court Executive shall enter
11 judgment accordingly and forward copies of the judgment and this order to
12 counsel of record. The file shall be closed.

13 **DATED** this 25th day of March, 2013.

14
15 *s/Lonny R. Suko*

16

LONNY R. SUKO
17 United States District Court Judge
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